



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examinations

625 Fulton Street, Room 503

Brooklyn, NY 11201

501.03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

March 5, 2010

Release Number: 201023060

Release Date: 6/11/10

LEGEND

ORG = Organization name

XX = Date Address = address

Taxpayer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

**LAST DATE FOR FILING A PLEADING
WITH THE TAX COURT, THE CLAIMS,
COURT, OR THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA: June 3, 20xx**

ORG
ADDRESS

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated November 21, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

As a result of our examination for the year ended December 31, 20XX, it was determined that your organization has been inactive and that there have been no operations or financial activities conducted or planned. As such, you failed to meet the operational requirements for continued exemption under IRC 501(c)(3).

Contributions to your organization are no longer deductible under IRC §170 after January 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations

Enclosure:
Publication 892

Letter 3607(04-2002)
Catalog Number: 34198J



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

1100 Commerce Street
Dallas, TX 75242

May 12, 2009

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Donna A. Ference
Internal Revenue Agent

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG	EIN:	Year/Period Ended December 31, 20XX

LEGEND

ORG = Organization name XX = Date City = City State = State

Issue:

Should the IRC 501(c)(3) tax exempt status of ORG (ORG) be revoked because it is not operated exclusively for tax exempt purposes?

Facts:

ORG filed Form 1023 on July 1, 20XX, stating it planned to house six residents; however, the org. states at its time of filing, that it “currently has no residents.”

According to its non-stock Articles of Inc. filed with the State of State on June 13, 20XX, the primary purpose of the organization is to provide assisted living services to elderly males and females, mentally ill and developmentally disabled individuals. The Articles of Incorporation included the proper clauses to meet the organizational requirements under I.R.C. Section 501(c)(3).

On September 13, 20XX, ORG requested an “Amendment to Form 1023 Application for Exemption” stating: “This org. has made a decision to provide disaster relief services for displaced Hurricane Katrina victims. The org. would like to amend the original application to include this additional purpose and associate it with the original purpose of the org. The org. has made a commitment to provide disaster relief services (i.e. shelter, lodging, housing, clothing, food and transportation) to displaced Hurricane Katrina victims in the Metro City area. The disaster relief services cannot be postponed to a later date because many displaced Hurricane Katrina evacuees do not have the available family/relatives, money, identification and/or resources to accommodate his/her immediate needs.”

ORG was approved for expedite treatment on September 26, 20XX, because they would be housing 12 displaced Hurricane Katrina individuals.

On October 1, 20XX, the organization filed amended Articles of Incorporation with the state changing its stated purpose to “Provide assisted living services to elderly males and females, mentally ill and development disabled individuals.

Based in large part on its proposed activities to aid victims of Hurricane Katrina, the organization received a favorable determination and was granted exemption under 501(c)(3); 509(a)(2) on November 21, 20XX, with an Advance Ruling Period ending December 31, 20XX. (Effective date of exemption: June 14, 20XX.)

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Through interviews conducted with responsible officials during the examination process, it was learned that the organization has not carried out any exempt-purpose activities since its original organization in 20XX nor has it taken any meaningful actions to enable it to carry out these activities in the near future.

Law and Analysis:

IRC Section 501(c)(3), provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1), provides that in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(c)(1), provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation Section 1.501(c)(3)-1(d)(2), provides that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Also, that the term "charitable" is used in the generally accepted legal sense and includes advancement of education and lessening the burdens of government.

Treasury Regulation Section 1.6001-1(c), provides in part every organization exempt under 501(a) shall keep permanent books of account or records, including inventories, as are sufficient to show specifically the items of gross income, receipts and disbursement. Such organizations shall also keep such books and records as are required to substantiate the information required by section 6003.

Revenue Ruling 69-174, 1969-C.B. 149, provides that an org. that provides free emergency rescue services to stranded, injured, or lost persons and to persons suffering because of fire, flood, accident or other disaster is servicing a charitable purpose.

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Revenue Ruling 74-361, 1974-2 C.B. 159, provides that an org. that provides free emergency rescue services to stranded, injured, or lost persons and to persons suffering because of fire, flood, accident or other disaster is serving a charitable purpose. indicates that an organization organized as a nonprofit volunteer fire company whose primary activity is fire fighting and rescue work, possess the necessary equipment to carry out these activities and is comprised of both employees and volunteers qualifies for exemption under IRC 501(c)(3) on the basis that the organization is lessening the burdens of government.

Revenue Ruling 78-99, 1978-1 C.B. 152, provides that an org. that provides counseling to widows during periods of grief and assists them in overcoming the legal, financial and emotional problems caused by the death of a spouse qualifies as charitable by alleviating the widows' distress.

Revenue Ruling 79-17, 1979-1 C.B. 193, provides that a hospice facility for terminally ill persons in need of specialized housing furthers a charitable purpose.

Revenue Ruling 79-18, 1979-1 C.B. 194, provides that housing for the elderly may further a charitable purpose of relieving a distress to which the elderly may be susceptible regardless of financial condition.

Revenue Ruling 85-2, 1985-1 C.B. 178, indicates that a determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burdens, and whether such activities actually lessen such governmental burdens. A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of government.

The Victims of Terrorism Tax Relief Act of 2001, Pub. Law. No. 107-134, signed into law by the President on January 23, 2002, Section 104 of the Act permits charities to provide immediate assistance to 9/11, and anthrax attack victims without an individual assessment of financial need (CPE text 2003). The Act also amended the IRC of 1986, inserting a new section 139, which defines qualified disasters and provides that disaster relief payments for victims of qualified disasters are excluded from income.

The technical explanation accompanying the Victims of Terrorism Tax Relief Act of 2001 directs the IRS to broaden the allowed activities of private foundations with regard to disaster relief for both the general public and employee beneficiaries of employer-sponsored foundations. (Pub. 3833, Disaster Relief: providing Assistance through Charitable Organizations."

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The IRS processed over 300 exemption applications submitted by newly formed 9/11 disaster relief org's. under expedited case processing procedures.

An. Org. qualifying under section 501(c)(3) may engage in other activities that accomplish charitable purposes even though those activities were not described in its exemption application, without having to obtain permission from the IRS. (Disaster Relief FAQ #A-8).

A charitable org. may provide short-term (emergency) assistance and longer-term aid to ensure that victims have the basic necessities, such as food, clothing, housing, transportation and medical assistance (including psychological counseling). Assistance may also be provided in the form of cash grants/vouchers for goods or services, etc. The type of aid that is appropriate depends on the individual's needs and available resources (Disaster Relief FAQ #A-2).

Dept. of Human Services states: "Adult Foster Care (AFC) homes are residential settings that provide 24-hour personal care, protection and supervision for individuals who are developmentally disabled, mentally ill, physically handicapped, or aged who cannot live alone, but who do not need continuous nursing care (Regulation of Adult Foster Care Homes – Act 218 of the Public Acts of 1979, as amended). (Regulation of Homes for the Aged – Act 368 of the Public Acts of 1978, as amended).

Government's Position:

The facts show the organization has failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1) above.

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3)." The organization has not conducted any exempt-purpose activities from its initial organization in 20XX to the present nor is it set-up to carry out these activities in future years.

The organization did not have any formal agreements or working relationships with any governmental units or procedures in place to receive any funding to provide assistance to victims displaced by Hurricane Katrina nor does it have any formal agreements or sources of funding from governmental entities to conduct exempt purpose activities for a charitable class of individuals. Therefore, it does not meet the requirements for exemption under IRC 501(c)(3), as indicated in Revenue Rulings 74-361 and 85-2, referenced above.

IRC section 6033(a)(1) provides, except as provided in IRC section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically

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the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

The organization does not meet the required record keeping requirements set forth in I.R.C. Section 6033 and was unable to produce any records to substantiate its exempt-purpose activities.

Treas. Reg. Section 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the District Director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC section 6033.

Based on all facts and circumstance, it appears that this organization was never organized for charitable purposes and clearly, will be unable to conduct any meaningful activities in the future as a section 501(c)(3) organization.

Conclusions:

Based on the foregoing reasons, this organization does not meet the operational test under IRC Section 501(c)(3). As a result, we are proposing revocation of its tax exempt status, effective as of January 1, 20XX.